IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SEVENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

-

WRIT PETITION NO : 13036 of 2004

-

Between:

Bombay Mercantile Co.operative Bank Limited,

Hyderabad Branch, 5-5-489, Hussaini Building Complex,
M.J.Market Road, Hyderabad by Branch Manager

..... PETITIONER

AND

-

1 Govt. of A.P.,Home Department rep., by its Secretary to

the Govt., Secretariat Buildings, Saifabad, Hyderabad.
2 Deputy Commissioner of Police, Traffic.1, Opp.Public

Garden, Nampally, Hyderabad.
3 Inspector of Police, (Administration) Traffic,
O/o the Addl.Commissioner of Police, Traffic, Nampally.
4 Mr.Mohd.Ahmed, s/o Mohd.Ghouse,
in the office of Addl.Commissioner of Police, r/o HSQ

Quarter No.5, Chelapura, A.P.Police Line, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or direction more particularly in the nature of writ of mandamus declaring that the inaction/omission on the part of the respondent No.2 & 3 in honouring their commitment given in letter dt.22-05-2002 undertaking that they will deduct the salary of respondent No.4 till they receive further instructions from the petitioner, is arbitrary, illegal, capricious and opposed to public policy and

consequently direct the respondent No.3 herein to deduct the salary of respondent No.4 as per their undertaking letter dt.22-05-2002 and remit the same to the petitioner bank till 'no due certificate' is issued by the petitioner

Counsel for the Petitioner: SMT.V.DYUMANI

Counsel for Respondent Nos.1 to 3: GP FOR HOME

The Court made the following ORDER:

The Bombay Mercantile Co-operative Bank Limited is the petitioner. The writ petition is filed seeking a Writ of Mandamus declaring the inaction/omission on the part of the respondents 2 and 3 namely, Deputy Commissioner of Police (Traffic-1) and Inspector of Police, (Administration) Traffic, Hyderabad, in honouring commitment as per the letter dated 22-5-2002 as illegal and arbitrary and for a consequential direction to third respondent to deduct the salary of the respondent No.4 and remit the same to the Petitioner-Bank till No Due certificate is issued.

The case of the petitioner is as follows. The fourth respondent is working as Junior Assistant in the office of the Assistant Commissioner of Police. He approached the petitioner-bank for a personal loan of Rs.40,000/- (Rupees forty thousand only). When the petitioner insisted upon a letter of undertaking from third respondent, who is the drawing officer; the third respondent issued a letter on 22-5-2002 to deduct salary and pay to the bank every month. Accordingly the loan was released, which is repayable in 36 instalments with an interest of 15% per annum. It is alleged that fourth respondent paid certain instalments and committed default and is yet to pay a balance of Rs.25,000/- (Rupees twenty five thousand only) as on 12-4-2004. The petitioner addressed a letter dated 14-8-2003 requesting to deduct salary and pay the bank, in vain. Therefore, present writ petition is filed.

Whether a duty is cast on the third respondent to deduct some amount from the salary of the fourth respondent and remit it to the petitioner towards discharge of the loan ? Whether the respondents 2 and 3 have any such power to deduct salary ? When these two questions are posed by this court, the learned counsel for the petitioner Ms.V. D. Yumany placed reliance on Section 60 of the Multy State Cooperative Societies Act 2002 (for short ‘the Act’) which reads as under.

Section 60:- Deduction from salary to meet multi-State Cooperative society’s claim in certain cases.- (1) Notwithstanding anything contained in any law for the time being in force, a member of a multi-state cooperative society may execute an agreement in favour of that society providing that his employer disbursing his salary or wages shall be competent to deduct every month from the salary or wages payable to him, such amount as may be specified in the agreement and to pay the amount so deducted to the society in satisfaction of any debt or other demand the member owes to the society.

(2) On the execution of such agreement, the employer disbursing the salary or

wages of the members shall, if so required by the multi-state cooperative society, by a requisition in writing and so long as the society does not intimate that the whole of such debt or other demand has been paid, make the deduction in accordance with the agreement and pay the amount so deducted to the society within a period of fourteen days of the date on which deduction has been made, as if it were a part of the salary or wages payable on the day as required under the Payment of Wages Act, 1936 (4 of 1936), and such payment shall be valid discharge of the employer for his liability to pay the amount deducted.

(3) If after the receipt of a requisition made under sub-section (2), the employer disbursing the salary or wages of the member at any time fails to deduct the amount specified in the requisition from the salary or wages payable to the member concerned or makes default in remitting the amount deducted to the multi-state cooperative society, the society shall be entitled to recover any such amount from such employer as arrears of land revenue and the amount so due from such employer shall rank in priority in respect of the liability of such employer equal to that of the salary or wages in arrears.

A reading of sub-section (1) would show that a member of a multy state cooperative society may in accordance with an agreement in favour of the society authorise the employer to deduct every month from the salary or wages payable to him. Sub-section (1) of Section 60 speaks up an agreement between the bank and the borrower. No such agreement is exempted by forth respondent placed before this court. Even such agreement exists the same cannot be enforced in these proceedings. If the petitioner is aggrieved, there are adequate remedies provided under the Act for recovering the same by way of arbitration or by filing an original application before the A.P. Cooperative Tribunal. In this writ petition no relief can be granted, especially, when no rule or regulation is brought to my notice empowering the drawing officer to deduct amount from the salary of the fourth respondent for repayment of the loan.

The Writ Petition is not maintainable and is accordingly dismissed. No costs.

_____

V.V.S. RAO, J.

27th July, 2004

Js

ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1 The Secretary to Government, Govt. of A.P., Home

Department, Secretariat Buildings, Saifabad,

Hyderabad.

2 Deputy Commissioner of Police, Traffic.1, Opp. Public

Garden, Nampally, Hyderabad.

3 Inspector of Police, (Administration) Traffic,
O/o the Addl. Commissioner of Police, Traffic, Nampally.

4 Mr.Mohd.Ahmed, s/o Mohd.Ghouse,
in the office of Addl. Commissioner of Police, r/o HSQ

Quarter No.5, Chelapura, A.P. Police Line, Hyderabad.

5 Two CCs to G.P. for Home, High Court Buildings, Hyderabad.

6 2 CD copies.